

The Interim-Compromise of Arrears Program (I-COAP) Process

The Interim Compromise of Arrears Program (I-COAP) applies to cases with arrears only. Cases involving current support are excluded from I-COAP. In order to qualify for a compromise of permanently assigned arrears, including principal and interest, under I-COAP, the noncustodial parent (NCP) must be able to pay a lump sum, upon execution of the compromise agreement, which includes the required arrears repayment amount, and any arrears owed to the custodial parent (CP) that must be paid before the permanently assigned arrears owed to the government can be paid.

1. Outreach to Targeted Non-Custodial Parents

Since I-COAP is a short-term program limited to only a subset of the obligors who could be eligible for participation in the Compromise of Arrears Program (COAP), the local child support agency (LCSA) shall not perform any caseload-wide outreach prior to implementation of the full COAP. However, the LCSA may perform outreach to NCPs who are potential candidates for I-COAP. The LCSA may first wish to do outreach to NCPs who owe only permanently assigned arrears, before doing outreach to NCPs who also owe arrears to the CP. The LCSA shall not perform outreach to NCPs whom the LCSA knows are not eligible for I-COAP. The LCSA also shall not perform outreach to NCPs who have a Family Violence Indicator in their case on behalf of the CP.

2. Receipt of Application

The LCSA shall provide application forms, Application for Child Support Compromise of Arrears Program - Arrears Only Cases, DCSS form 0110, to targeted NCPs and to other NCPs with permanently assigned arrears who request applications. The form seeks verified information about the NCP's income and assets. If necessary, the LCSA shall assist NCPs with completion of the application form.

When the application is received, the LCSA shall review it for completeness and inclusion of all necessary supporting documentation. If the application is incomplete, the LCSA shall return it to the NCP with an explanation of what information is missing, using the Notice of Incomplete Information, DCSS form 0111. If the application is complete, the LCSA shall proceed to evaluate the application.

3. Alternative Procedure Determination

The LCSA shall review each application to ensure that I-COAP is the most appropriate approach for the recovery of support from the NCP. In some instances, I-COAP may not be the most appropriate program; other programs or procedures authorized and defined by statute or regulation may be more appropriate. For example, state law may dictate that a set aside of a presumed income order is appropriate under the circumstances, or that the obligor is entitled to a compromise of all arrears under Assembly Bill 1449 Compromise of Arrears - Family Reunification. Alternatively, a case may qualify for immediate closure if, for example, the NCP's income is from SSI/SSP and he or she has no other attachable income or assets. The LCSA must be cognizant

of the remedies that may be appropriate in the case, and apply the appropriate one. In such a case, the LCSA shall send the NCP a denial of eligibility, Notice of Denial of Request for Compromise of Arrears – Arrears Only Cases, DCSS form 0112, indicating under “other” that I-COAP was not the appropriate remedy, and how the LCSA will proceed with the case.

4. Eligibility Determination

The LCSA shall determine the NCP’s eligibility for I-COAP in accordance with the following eight specific eligibility criteria:

1. Minimum amount of permanently assigned arrears, including principal and interest, owed to the government of \$5,000. If the NCP has multiple cases within the same LCSA in California, the total of the permanently assigned arrears in all cases must equal at least \$5,000.
Determination: Review of arrears balances in case file.
2. No current support due.
Determination: Review of case file.
Note: The NCP may still be eligible for COAP (once implemented).
3. No conviction or contempt finding for failure to pay child support within three years prior to the date of application.
Determination: Review of case file.
4. No intentional failure to pay child support in anticipation of I-COAP.
Determination: Review of payment record in the NCP’s case. If the NCP has multiple cases, each case shall be reviewed. If the NCP has significantly reduced child support payments in at least one case since August 2003 without providing a reasonable explanation (e.g., lost employment), the LCSA shall determine that the NCP stopped paying support in anticipation of I-COAP and is ineligible for the program.
5. Case or cases in only one LCSA in California. This restriction does not include duplicate cases in California’s child support system that should be transferred to the appropriate LCSA. If there is a duplicate case, the LCSAs shall work together to transfer the case as appropriate, and to mutually agree to the compromise if the transfer cannot be accomplished timely. The lead LCSA shall be the LCSA whom the NCP contacted.
Determination: Caseworker Query Tool.
6. No ability to pay all child support arrears and interest owed with the NCP’s income and assets.
Determination: Review of arrears balance, income and assets through the I-COAP Worksheet.

7. Ability to pay arrears owed to the CP, that must be distributed prior to distribution of the arrears owed to the government (all arrears owed to the CP except for Unassigned During Assistance Arrears) and the Arrears Repayment Amount, in a lump sum, upon execution of the Agreement.

Determination: Review of arrears balance, income, assets and offer in application.

Note: The NCP may still be eligible for COAP (once implemented).

8. No concealment of any income or assets and no intentional withholding or falsifying of financial information.

Determination: Review of application, case file and verifying information.

If the NCP fails to meet any one of the above criteria, he or she is ineligible to participate in I-COAP. The LCSA shall notify the NCP that the application has been denied by sending the NCP a completed Notice of Denial of Request for Compromise of Arrears – Arrears Only Cases, DCSS form 0112. The LCSA shall record the reason for the denial of eligibility on the Eligibility Worksheet, DCSS form 0149, and forward the Application, Eligibility Worksheet, a copy of the denial letter, and all documentation relevant to the decision to DCSS by fax at (916) 464-2448 within two working days of the denial.

If the NCP is found ineligible because of the reasons stated in 2 or 7 above, the NCP may still be eligible for COAP. Once COAP has been implemented in the LCSA, the LCSA shall notify NCPs denied for the reasons stated in 2 or 7 that they may qualify for COAP.

5. Arrears Balance Determination

The LCSA shall determine the accurate outstanding arrears balances for the NCP. If the NCP owes arrears on more than one case in the LCSA, the LCSA shall determine the accurate outstanding arrears balances for each case. The arrears balances are categorized into permanently assigned arrears owed to the government and all other arrears. The LCSA must also determine the accurate Unreimbursed Assistance Pool (UAP) in order to ensure that only money owed to the government may be compromised. It is extremely important that arrearage balances and UAP balances be accurate since this forms the basis for I-COAP decision making, and the compromise amount will not be subject to change once an Agreement is entered. The maximum amount that may be compromised for each case is the total of the permanently assigned arrears up to the amount of the UAP. Any other arrears may be owed to the CP and, therefore, may not be compromised as part of I-COAP.

6. Arrears Repayment Amount Calculation

The LCSA shall calculate the Arrears Repayment Amount – the amount of support the NCP must pay in order to have the balance of all permanently assigned arrears (up to the amount of the total UAP) compromised. Determining the Arrears Repayment

Amount requires calculation of three possible repayment amounts on the I-COAP Workbook, the highest of which is the Arrears Repayment Amount. The Arrears Repayment Amount is the highest of the following:

1. Offer Amount
2. Minimum Amount
3. Income/Asset Amount

Upon execution of the Compromise Agreement, the NCP must pay off in a lump sum the Arrears Repayment Amount, along with any arrears owed to the CP that must be paid before the permanently assigned arrears owed to the government can be paid.

The I-COAP Workbook is an Excel 2000 document that includes several worksheets which address eligibility, income and asset valuation, and, in the instance of multiple cases within the same LCSA, allocation of arrears and UAP balances among each case and in total. Instructions for entering data into the I-COAP Workbook for single cases are set out in the Instructions for Completing I-COAP Automated Worksheet, DCSS form 0152. The instructions for the Multiple Cases I-COAP Automated Worksheet is outlined in DCSS form 0224. Both forms are attached. Upon entering data into key fields on the worksheets, the I-COAP Workbook will automatically fill in remaining fields and compute the Arrears Repayment Amount. The multiple case calculation computes the total Arrears Repayment Amount and then allocates that amount to each case proportionate to its arrears and UAP balances. Data entered into the I-COAP Workbook must be verified, as appropriate.

6.1. Offer Amount

The Offer Amount is the amount offered by the NCP in the Application for repayment of arrears.

6.2. Minimum Amount

The Minimum Amount is ten percent of the total arrears available for compromise, which is the lesser of the permanently assigned arrears and the UAP. The Minimum Amount is increased by ten percent if the NCP had the historical ability to pay child support and substantially failed to do so as set forth in section 6.4, below.

6.3. Income/Asset Amount

The Income/Asset Amount is determined by calculating the amount of the NCP's income and assets that are available to repay arrears. This is done by calculating 40 percent of the NCP's gross income for the past 12 months and adding that to the NCP's equity interest in his or her assets. Equity interest in assets is calculated by determining the parent's interest in the asset and the fair market value of that interest. In determining income, if the NCP's income has changed within the last 12 months, the LCSA shall compute what the gross income for the next 12 months should be.

Gross income does not include income from means-tested public assistance programs, e.g., California Work Opportunity and Responsibility to Kids (CalWORKs), General Assistance/Relief, and Supplemental Security Income/State Supplementary Program (SSI/SSP). In addition, payments made to an NCP on behalf of a needy child in the NCP's care are not counted as income provided such payments are necessary to: implement the child's social service plan; provide financial assistance to a family to help pay the expense of rearing the child; and address any special needs the child may have, e.g., Adoption Assistance payments from the California Department of Social Services.

Gross income is the NCP's actual income unless the NCP is voluntarily unemployed or underemployed to avoid paying support. If the NCP is voluntarily reducing his or her income in order to avoid paying support, the LCSA shall increase the parent's income to what that parent could reasonably be expected to earn. This ensures that parents are not rewarded with a compromise of arrears that they could otherwise pay but for their voluntary unemployment or underemployment to avoid paying support. This is a higher standard for imputing income than the standard used under the child support guideline.

For each asset, the LCSA shall determine the NCP's equity interest by first establishing the parent's interest in the asset and the fair market value of that interest. Any outstanding loans or encumbrances on that interest are then subtracted from its fair market value.

Some assets have additional exemptions to their value, necessary to help the NCP meet his or her living expenses. These exemptions are similar to the exemptions in bankruptcy and will be automatically subtracted from the NCP's interest in the asset by the I-COAP Workbook. Exemption amounts are \$75,000 for a home in which the NCP resides and \$5,000 for one vehicle.

The value of all of the NCP's assets are then added together. This total asset value of all non-cash assets is then reduced by 20 percent, the amount used by the Internal Revenue Service (IRS) to recognize the cost of sale of the asset should the NCP need to sell the asset to pay support. Cash assets, including bank accounts, savings accounts and cash value of life insurance policies, are not subject to the 20 percent reduction.

For example, if the NCP resides in a home worth \$150,000, with an outstanding loan of \$50,000, the NCP will have an asset value of \$20,000:

$$\begin{aligned} \$150,000 \text{ value} - \$50,000 \text{ loan} &= \$100,000 \text{ equity interest in home} \\ \$100,000 - \$75,000 \text{ homeowners exemption} &= \$25,000 \\ \$25,000 - (20\% \times \$25,000) \text{ cost of sale} &= \$20,000 \end{aligned}$$

The income portion and the asset portion are then added together to arrive at the Income/Asset Amount. If the NCP had the historical ability to pay child support, and

substantially failed to do so as set forth in section 6.4, below, the Income/Asset Amount is increased by ten percent.

6.4. Historical Ability to Pay

For many NCPs, arrears accrued because they did not have the ability to comply with their support order. Their child support order did not represent what they could actually afford to pay. For example, the order may have been established by default using presumed income or not modified as circumstances changed, such as loss of employment or incarceration. Compromise may be particularly appropriate in these cases. However, other NCPs may have had the ability to pay support and chose not to pay. In these cases, it is appropriate to increase the repayment amount to reflect the NCP's deliberate choice to avoid paying support.

The LCSA shall review the case file to determine if the NCP had the documented ability to pay during the time period of the order and substantially failed to comply. If the LCSA determines that the NCP had the ability to pay and substantially failed to do so, the Minimum Amount and the Income/Asset Amount, determined respectively under sections 6.2 and 6.3, above, are increased by 10 percent. This determination may not always involve a month-by-month determination of the order amount, the payment amount and the NCP's ability to pay during that period. Rather, it may involve an analysis of the NCP's overall ability to comply with the support order and whether he or she substantially complied in accordance with that ability. In the case of multiple cases, if the NCP had the historical ability to pay and substantially failed to do so in at least one case, the 10 percent increase is applied.

6.5 Notifying the NCP of Arrears Repayment Amount

In order to ensure the NCP understands the full amount of the arrears he or she is being asked to pay to enter into the compromise, the LCSA shall immediately notify the NCP of the proposed Arrears Repayment Amount, along with any arrears owed to each CP that must be paid in a lump sum upon execution of the Compromise Agreement. The LCSA should also explain to the NCP that any arrears owed beyond the UAP will remain his/her responsibility to pay to the CP and that those arrears are not subject to this compromise. The notice to the NCP should occur prior to submission of the case for DCSS approval. If the NCP decides he or she cannot repay this in a lump sum, the LCSA shall notify the NCP that the application has been denied by sending the NCP a completed Notice of Denial of Request for Compromise of Arrears – Arrears Only Cases, DCSS form 0112. The LCSA shall record reason 7 as the reason for the denial of eligibility on the Eligibility Worksheet, DCSS form 0149, and forward the Application, Eligibility Worksheet, a copy of the denial letter, and all documentation relevant to the decision to DCSS by fax at (916) 464-2448 within two working days of the denial.

7. DCSS Approval of Compromise Agreement Terms

Before entering into any Compromise Agreement, the LCSA must obtain prior approval from DCSS of the Arrears Repayment Amount in all cases under I-COAP. Each LCSA will be assigned a DCSS analyst to assist with the review process. The list of DCSS

analysts and assigned LCSAs is attached. The LCSA shall seek approval by forwarding to DCSS by either secure fax or overnight mail delivery service the following information:

1. Completed application and supporting documentation, including any information verification performed by the LCSA;
2. UAP and arrears balances and supporting documentation for each case; and
3. Completed Worksheets from the I-COAP Workbook.

The secure fax number is (916) 464-2448. Overnight mail deliveries shall be sent to:

Department of Child Support Services
Collections Enhancement Branch
Attn: Denise Cason
11120 International Drive, MS #30
Rancho Cordova, CA 95741-9064

Upon receipt of all necessary information, DCSS will review the proposed compromise and will approve or deny the compromise or approve a modified compromise. The approved Arrears Repayment Amount will be valid for 60 days from the date of approval by DCSS. The Arrears Repayment Amount remains valid even if the permanently assigned arrears increase as the result of interest charges. If DCSS denies the compromise, the LCSA shall notify the NCP that the application has been denied by sending the NCP a completed Notice of Denial of Request for Compromise of Arrears – Arrears Only Cases, DCSS form 0112 and fax a copy of the denial notice to DCSS.

Note: All compromise agreements and supporting documentation must be forwarded to DCSS for prior approval regardless of the amount compromised.

8. Execution of Agreement and Payment

Upon receipt of approval from DCSS, the LCSA shall for each case to be compromised prepare the Agreement to Compromise Assigned Arrears, DCSS form 0139, and arrange for its execution. The Agreement shall include all up-to-date arrears balances for each case to be compromised. At the signing of the Agreement, the NCP must pay the full Arrears Repayment Amount, along with any arrears owed to the CP that must be repaid before the permanently assigned arrears can be paid. For compromises involving multiple cases, the LCSA shall prepare a separate Agreement which specifies the repayment and compromise amounts for each case. After receiving payment, the LCSA shall reduce arrears balances and the UAP balance by the amount paid and the amount compromised. If the payment is made by personal check, the LCSA shall wait until the check has cleared before reducing the UAP.

If the case is an interstate case, the LCSA shall also notify the responding state of the arrears reduction.

9. Sending the Compromise Agreement to DCSS

Within two working days of the funds clearing, the LCSA shall for each case forward a copy of the executed Agreement to DCSS by fax or overnight mail as set forth in Section 7, above. Timely receipt of all executed Agreements is necessary so DCSS can correctly track all support collected and compromised.

10. Filing the Compromise Agreement with Court

The LCSA shall for each case file a copy of the executed Agreement with the court which has jurisdiction over the case, along with the Notice of Agreement to Compromise Assigned Arrears, DCSS form 0145.

11. Case Closure

If no further arrears are owed to the CP, the LCSA shall close the case. If additional arrears are owed to the CP, the LCSA shall continue to enforce the case.

12. Rescinding the Agreement

If, after the NCP has executed a Compromise Agreement, the LCSA determines that the parent concealed, withheld or falsified information as described in section 4, item 8, above, the LCSA shall void the Agreement by providing written notification to the NCP, Notice of Canceling of Agreement for Child Support Compromise of Arrears Program – Arrears Only Cases, DCSS form 0140. The LCSA shall reinstate all arrears and interest compromised under the Agreement, including interest on the arrears from the date of approval of the compromise, and increase the UAP by the amount previously compromised. The LCSA shall not refund the lump sum payment. The LCSA shall immediately notify DCSS by fax of the rescission by forwarding a copy of the Notice of Rescission – Child Support Compromise of Arrears Program – Arrears Only Cases, DCSS form 0141, and the amount of arrears and interest reinstated. The LCSA shall also file the Notice of Rescission of Child Support Compromise of Arrears Program – Arrears Only Cases, DCSS form 0141, with the court.